

REMARKS

This communication is a full and timely response to the Office Action dated January 13, 2010. Claims 1, 3-14, 16, 19-25, 30, 31, 33-37, 39, and 42-46 remain pending, where claims 15, 17, 18, 26-29, 38, 40 and 41 were previously cancelled. By this communication, claims 2 and 32 are canceled without prejudice or disclaimer to the underlying subject matter, and claims 1, 3, 7, 8, 9, 10, 11, 21, 31, 33-37, 39, 42, 43, and 46 are amended.

Applicant's claims were variously rejected for alleged unpatentability. In particular, in numbered paragraph 3 on page 2 of the Office Action, claims 1-14, 16, 19, 20, 31-37, 39, 42, 43, 44, and 46 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Applicant respectfully traverses this rejection.

However, in an effort to expedite prosecution the subject claims are amended to address the Examiner's concerns. Withdrawal of this rejection is respectfully requested.

In numbered paragraph 5 on page 3 of the Office Action, claims 1-10, 16, 19-20, 31-33, 42-45 stand rejected under 35 U.S.C. § 103(a) for alleged unpatentability over *Schroeder et al.* U.S. Patent Pub. No. 2003/0130883 and further in view of *Failing, Jr. et al.* 5,448,226. Applicants respectfully traverse this rejection.

Figures 1-10 describe a system in which a retailer and manufacturer contribute information to a promotion and price computation model that calculates a retail price according to a sales contract. The manufacturer contributes promotion information, such as a "buy down" or "discount" data, and the retailer contributes price determination parameters. The promotion and price computation model

calculates a retail price based on the aforementioned data. Promotion and price computation model implements a contractual promotional agreement between the retailer and the manufacturer based on the calculation. To monitor whether a retailer violates the promotional agreement, a control violation flag can be set by the system and later detected by the manufacturer during an audit of the retailers records in the system.

Independent claims 1, 11, and 31 broadly encompass the foregoing features. For example, each of the independent claims recites, among other features, calculating a retail price based on information provided by the promotion and price computation model.

The combination of *Schroeder* and *Failing, Jr.* fails to disclose or suggest these features.

Schroeder discloses a method and system that predicts the profit attributable to a proposed sales promotion of a product. This system is a business planner that permits a retailer or remote sales staff member to experiment with a variety of promotional scenarios to determine the benefits of alternate promotions. The proposed promotions are entered into a computer program that runs a model based on a prediction of increased sales to determine a set of promotion conditions. The system uses historical databases of sales for a variety of promotion conditions and predicts how planned promotions will affect sales in a particular store.

Schroeder, however, does not disclose or suggest the calculation of a retail price as recited in claims 1 and 31. Rather, variously throughout the specification *Schroeder* discloses the following:

Proposed promotions are entered into a computer program that runs a lift model 4 for the products and markets of concern in the division. Prediction of increased sales, or sales lift, due to a promotion is achieved using mathematical models for market response to a set of promotion conditions, with a plurality of promotion types being available in the model. Schroder, pgph 58.

. . .

If the predicted sales and profit levels 6 are in alignment 14 with marketing objectives 10 , manufacturing capacity 12 , or other constraints or objectives, the promotion may proceed to completion 16 . If the predicted sales and profit levels 6 are out of alignment with marketing objectives 10 , manufacturing capacity 12 , or other constraints or objectives, the sales staff in one or more regions receives instructions to bring the predicted sales and profits in line with corporate needs 18 . For example, if the sales lift model predicts that the sales volume will be too low, one or more of the sales regions will be asked to increase the level of promotion to increase sales, such as by offering a higher discount or by increasing advertising. Id., pgph 66

. . .

The business planner system 1 uses cross elasticity factors to predict not only how a price reduction or other promotion will increase sales of the promoted product, but how it will affect sales of other products as well, including products in other categories, products from other manufacturers, or products that might not seem related at first glance. The business planner system 1 includes deriving or obtaining cross elasticity coefficients, and then predicting sales lift and ROI for any of the following: a) a specific product; b) a category of products from a single vendor; c) products from multiple vendors within a common category; d) multiple products from multiple vendors. The main benefit is to the customer, but the manufacturer of the product being promoted benefits from knowledge of how the promotion will affect the total bottom line for the retailer, including increased sales of other products from other vendors. Id., pgph 84.

Based on the preceding excerpts, one of ordinary skill would understand that rather than predicting or **calculating a retail price**, the business planner system of *Schroeder* **predicts sales and profits**.

Failing, Jr. discloses a system having a central store computer and multiple ESL-mounted shelf talkers, which are signs, cards or other printed material placed at the shelf location. The system includes sensors to detect the presence of shelf talkers. An audit is performed to determine which products are on promotion, the start and end dates of the promotion, and the current status of whether or not shelf talkers are installed. This reference, however, does not remedy the deficiencies of *Schroeder* as there is no disclosure or suggestion of a capability to calculate retail price as recited in the claims.

The Examiner acknowledges that the combination of *Schroeder* and *Failing, Jr.* fails to disclose or suggest the use of a schedule that is encrypted and decrypting the schedule on a segment-by-segment basis. *Werner* is relied upon in an effort to remedy this deficiency.

While not acquiescing to the asserted teachings of *Werner*, Applicant respectfully submits that this reference does not disclose or suggest the calculation of retail price, and therefore fails to remedy the deficiencies of *Schroeder* and *Failing, Jr.* as it concerns independent claims 1 and 31.

In summary, *Schroeder*, *Failing, Jr.*, and *Werner* when applied individually or collectively fail to disclose or suggest every feature and/or the combination features recited in Applicant's claims. Thus, a *prima facie* case of obviousness has not been established. Based on the foregoing discussion and the established deficiencies in the applied art, withdrawal of this rejection is respectfully requested.

In numbered paragraph 6 on page 9 of the Office Action, claims 21-25, 27, and 30 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Teicher et al* (U.S. Patent No. 5,933,813) in view of *Failing, Jr.* and further in view of *Werner*. Applicant respectfully traverses this rejection.

Teicher discloses a sales promotion data processor system in which a merchant 100 communicates with a store computer system 101 through a merchant interface 102. The merchant interface 102 provides the store computer system with 101 with cost information regarding the various products offered sale by the store, and basic price information regarding the normal price for the merchandise items. The computer system 101 includes storage devices that store predetermined criteria used to determine sales promotion prices of the products offered for sale. See Teicher, col. 3, ll. 57-67. The computer system 101 is connected to communicate with point of sale sensor units, which sense each product presented at the respective point of sale unit and generate purchase data identifying the sold products. Id., col. 4, ll. 17-20.

Teicher discloses that the computer system (controller) is in communication with a retailer (merchant or point of sale sensors), but does not disclose or suggest that the system is in communication with a manufacturer that provides promotion information to the controller.

Neither *Failing, Jr.* nor *Werner* remedy the deficiencies of *Teicher*. *Failing, Jr.* discloses a system having a central store computer and multiple ESL-mounted shelf talkers, which are signs, cards or other printed material placed at the shelf location; and *Werner* is directed to a video presentation system and is applied for its alleged teaching of an encrypted schedule. Thus, *Teicher*, *Failing, Jr.*, and *Werner* when

applied individually or combined as alleged by the Examiner fail to disclose or suggest all the features recited in independent claim 21. For at least this reason, withdrawal of the rejection to claims 21-25, 27, and 30 is deemed appropriate.

Additionally, in numbered paragraph 7 on page 13 of the Office Action, claims 11-14, 34-37, and 39 stand rejected under 35 U.S.C. § 103(a) for alleged unpatentability over *Schroeder* in view of *Failing, Jr.*, and further in view of *Werner* (U.S. Patent Publication No. 2002/0069107), and further in view of *Teicher*. Applicant respectfully traverses these rejections.

Claims 11-14, 34-37, and 39 are distinguishable over the applied references by virtue of their dependency from claims 1 and 31 where applicable, and because of the additional features recited therein. Moreover, while not acquiescing to the alleged teachings of *Teicher*, when applied individually or collectively in view of *Schroeder* and *Failing, Jr.*, this reference fails to remedy the deficiencies of the same. Withdrawal of this rejection, therefore, is respectfully requested.

Conclusion

Based on the foregoing amendments and remarks, Applicant respectfully submits that claims 1, 3-14, 16, 19-25, 30, 31, 33-37, 39, and 42-46 are allowable and this application is in condition for allowance. In the event any unresolved issues remain, the Examiner is invited to initiate an interview with Applicant's representative in an effort to expedite prosecution of this application.

Respectfully submitted,

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